

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

BLUE SPIKE, LLC,

Plaintiff,

V.

TEXAS INSTRUMENTS, INC., et
al.,

Defendants.

CASE NO. 6:12-cv-499-MHS-CMC

LEAD CASE

Jury Trial Demanded

**BLUE SPIKE, LLC'S RESPONSE TO COGNITEC SYSTEMS CORP.
AND COGNITEC SYSTEMS GMBH'S OBJECTIONS TO MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS REGARDING
DEFENDANT'S MOTION TO DISMISS**

motion. Cognitec would have the Court believe that the pleadings in both cases are exactly the same, when in fact, they are not. Judge Craven's report and recommendations should be accepted, and Defendant's motion should be denied.

B. Blue Spike's First Amended Complaint Pleads the Necessary Facts to Support its Claim for Contributory Infringement.

Plaintiff Blue Spike, LLC is required to identify which methods or systems indirectly infringe and the direct infringers that Defendant contributes to. In its First Amended Complaint, Plaintiff Blue Spike, LLC identifies four of Defendant's infringing systems and identifies nine direct infringers. *See* Plaintiff's First Amended Complaint, Dkt. 1115 at ¶¶ 28, 36, 44, 52, 60. Pursuant to this court's previous rulings, Blue Spike further identifies six systems and products made and developed by direct infringers which incorporate Defendant's previously infringing systems. *See id.* Plaintiff Blue Spike, LLC has sufficiently pleaded contributory infringement.

Despite the supporting Federal Circuit case law and Judge Craven's recommendation to follow that case law, Cognitec persists with the claim that Blue Spike is required to "identify which patent claims are allegedly indirectly infringed." Cognitec's Objections to Craven's Report and Recommendations, Dkt. 1663, at 2. *See contra In re Bill of Lading Transmission and Processing System Patent Litigation*, 681 F.3d 1323, 1335 (Fed. Cir. 2012) (to survive dismissal, "a plaintiff need not even identify which claims it asserts are being infringed"); *see also* Craven's Report and

Recommendation, Dkt. 1645 at 7. The Court should accept Judge Craven's report and recommendations and deny Defendant's motion to dismiss.

C. Pursuant to this Court's Previous Decisions, Blue Spike's First Amended Complaint Pleads Sufficient Facts to Support Willful Infringement.

In its First Amended Complaint, Plaintiff Blue Spike, LLC provides evidence that Defendant's likely knew of the patents pre-suit due the patents' prominence in addition to alleging the original complaint put Defendants on notice. In *NovelPoint Security LLC v. Samsung Elecs. Am., Inc.*, this Court determined that such a showing was sufficient to overcome a motion to dismiss. *See* Case No. 2:12-cv-100, Dkt. 126 (E.D. Texas July 22, 2013). Judge Craven agreed and noted that despite Defendant's assertions or implications to the contrary "[a] motion to dismiss is not the proper mechanism for the Court [to] make an assessment that the plaintiff will fail to find evidentiary support for his allegations or prove his claim to the satisfaction of the factfinder." *See id.* at 3 (*quoting Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1969 (2007)). Defendant's motion to dismiss Plaintiff's willful infringement contentions should be denied.

CONCLUSION

For the above stated reasons, Judge Craven's report and recommendations should be accepted and Defendant's motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email.

/s/ Randall T. Garteiser
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